U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17183295

Date: JUL. 27, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a human resources specialist, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that a waiver of that classification's job offer requirement, and thus of a labor certification, would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the

sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884. *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[1]

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign

[1] To establish that it would be in the national interest to waive the job offer requirement, a petitioner must go beyond showing their expertise in a particular field. The regulation at 8 C.F.R. § 204.5(k)(2) defines ·'exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute. individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given petitioner seeks classification as an individual of exceptional ability, or as a member of the professions holding an advanced degree, they must go beyond demonstrating a degree of expertise significantly above that ordinarily encountered in their field of expertise to establish eligibility for a national interest waiver. *See Dhanasar,* 26 I&N Dec. at 886 n.3.

national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[2]

II. ANALYSIS

The Petitioner previously worked as a human resources specialist, primarily with [redacted] in Brazil, until 2015. He proposes to offer his experience and expertise in human resources to work for a company in the United States, specifically in the areas of global mobility, hiring, recruitment, benefits, remuneration, and contract and personnel management.[3] The record includes diplomas and transcripts showing that he earned a bachelor degree in translation and interpretation in 1994, and a licentiate degree in language arts in 1995, from the [redacted] in [redacted] Brazil. In addition, the Petitioner submitted a diploma and transcripts which indicate that he received a master's degree of business administration from [redacted] in 2014. Further, the record includes letters documenting the Petitioner's more than 30 years of experience as a human resources specialist with [redacted] While the Director did not indicate in his decision whether the Petitioner was eligible for the EB-2 immigrant visa classification, on review we conclude that he qualifies as a member of the professions with an advanced degree. Therefore, the sole issue on appeal is whether he merits a waiver of the classification's job offer requirement under the framework laid out in *Dhanasar*.

A. Substantial Merit and National Importance of the Proposed Endeavor

As stated above, the merit of a petitioner's proposed endeavor may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. The Petitioner submitted materials from the Society of Human Resources Management (SHRM) and The Manpower Group which show the substantial merit to U.S. businesses of his proposed endeavor in recruiting, hiring, and retaining qualified employees. Accordingly we agree with the Director that the Petitioner's proposed endeavor is of substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the "potential prospective impact" of his work. In his decision, the Director concluded that the description of the Petitioner's proposed endeavor was not sufficiently specific, but instead related more generally to the

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[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[3] For the first time on appeal, the Petitioner provides a statement indicating that his endeavor would include volunteering with nonprofit organizations in the [redacted] Florida area. This statement is not clear whether this is intended to replace his previously stated endeavor of employment in the field of human resources, or whether he would volunteer in addition to pursuing employment as a human resources specialist. Nevertheless, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). He also submits new evidence with his brief. However, where, as here, a Petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The Director's request for evidence specifically sought further information about the national importance of the Petitioner's proposed endeavor. We will therefore not consider this new addition (or change) to the Petitioner's proposed endeavor, or the new evidence submitted on appeal.

occupation of human resources specialist. On appeal, the Petitioner continues to list the benefits of human resources work in general and make broad statements such as "Qualified employees have higher productivity and lower turnover," "U.S. organizations growing at a rapid pace are more likely to operate in global markets," and "Companies growing on U.S. soil generate more jobs in the country and positively enhance the U.S. economy." But none of these potential widespread benefits are directly linked to the any specific activity proposed by him.

Further, the Director stated that the Petitioner had not shown that his work for a single, unspecified employer would have national or even global implications in the human resources field, as the effects of his endeavor would be limited to that company and its employees. In his appeal brief, the Petitioner asserts that his endeavor is "capable of producing substantially positive effects, due to the ripple effects" of his activities. However, in addressing national importance in the first prong of the framework, the *Dhanasar* decision sets out that the focus is on the specific endeavor being proposed. As such, we do not consider the indirect consequences of a petitioner's activity when determining whether it is of national importance. The Petitioner has not provided evidence to support his assertion that his work as a human resources specialist for one or more employers would have substantially positive effects or would otherwise have broader implications beyond those employers.

The Director also noted in his decision that to the extent that the Petitioner described his pursuit of further training and professional development, these activities would support his endeavor rather than contribute to its national importance. We agree, and note that the Petitioner does not explain how they would have broader implications in the human resources field beyond himself.

For all of the reasons specified above, we agree with the Director's conclusion that the Petitioner has not established that his proposed endeavor is of national importance, and that he therefore does not meet the requirements of the first prong of the *Dhanasar* framework.

B. Whether the Petitioner is Well Positioned to Advance his Proposed Endeavor

The second prong of the *Dhanasar* framework shifts the focus from the proposed endeavor to the foreign national, and takes a variety of factors into account when considering whether they are well positioned to advance the proposed endeavor. Those factors include, but are not limited to, the individual's education, skills, knowledge, and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

Here, the Petitioner has provided evidence of his educational qualifications to continue working as a human resources specialist, certificates showing his completion of training in this field, and reference letters from former colleagues which document his decades of experience in this occupation. These letters describe the completion of human resources projects for his employer, including those involving compensation and benefits processes, employee hiring, and the repatriation of international employees. The second reference letter from [redacted] also states that a paper that the Petitioner presented at a conference on the latter subject "left a crucial and unprecedented legacy for the organization and scientific community," but the record does not include evidence to support the paper's influence in the broader field of human resources.

While the evidence mentioned above certainly supports the Petitioner's qualification to continue successfully working in the human resources field, that is only one of the factors mentioned in the *Dhanasar* decision, and in this case it is not determinative when considered with other factors. As noted by the Director in his decision, the Petitioner's plan for advancing his proposed endeavor consists only of his statements that he plans to work for an employer in the U.S. He does not identify a specific area, type or size of employer, or industry in which he would work, nor does he indicate how he would otherwise engage in human resources activities. While a petitioner seeking a national interest waiver is requesting a waiver of the underlying immigrant visa classification's job offer requirement, here the Petitioner's statement of intent is insufficient to show that he has a plan or model to advance his endeavor in the United States. In addition, when viewed in light of his lack of employment, or pursuit of any other activity, in his proposed endeavor for more than three years prior to the filing of his petition, and the lack of evidence of any action to implement his vague plan, the Petitioner's statement of intent is not only insufficient to show his commitment to his proposed endeavor, but is also of significantly reduced credibility. We therefore agree with the Director and conclude that the Petitioner has not established that he is well positioned to advance his proposed endeavor in the United States, and does not meet the second prong of the *Dhanasar* framework.

III. CONCLUSION

The Petitioner has not met the first or second prongs of the *Dhanasar* analytical framework. We therefore conclude that he has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.